

[Submitting counsel below]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**IN RE: UBER TECHNOLOGIES, INC.,  
PASSENGER SEXUAL ASSAULT  
LITIGATION**

No. 3:23-md-03084-CRB

**PLAINTIFFS' OPPOSITION TO UBER'S  
MOTION FOR A FILING CUTOFF**

This Document Relates to:

All Cases

Judge: Honorable Charles R. Breyer  
Date: February 28, 2025  
Time: 10:00 am  
Courtroom: 6 – 17th Floor (via Zoom)

Plaintiffs respectfully request that the Court deny Defendants' motion to set a filing cutoff.

One month ago, Uber announced to the Court that its chosen mediator, without involvement of every MDL Co-Lead and Liaison Counsel, "ha[s] done ... a terrific job of corralling what is on the order of 85% ... of all the claims at issue" through "a very robust, fully developed mediation process." 1/24/25 H'rg Tr. at 12:18-13:8. Evidently that process was unsuccessful, so Uber has now informed Co-Lead Counsel that it will support appointment of Hon. Gail A. Andler (ret.), one of Plaintiffs' initial suggestions, as Settlement Special Master.

At the same time, as the Court directed, this litigation proceeds apace, notwithstanding any settlement considerations. 1/24/25 H'rg Tr. at 9:17-21. There are four depositions scheduled just this week, Judge Jones is overseeing privilege disputes, case-specific discovery begins March 14, and other discovery and expert work is ongoing.

Now Uber again seeks a filing "cutoff," but does not justify the time and expense of that undertaking, especially in light of all the work the parties have to do and the Court's recent order that any cutoff must wait until the parties complete common fact discovery. 12/19/24 H'rg Tr. at

1 19:11-20:11. As with the earlier requests, Uber does not cite any precedent supporting such an  
2 order. It appears no MDL court has ever issued one. Nor does Uber acknowledge the practical  
3 problems its motion would create. Sexual assault survivors find it difficult to file cases and should  
4 not face premature deadlines for doing so absent compelling circumstances. And each survivor  
5 has a due process right to file a claim if and when they wish, subject to applicable statutes of  
6 limitations. If the Court orders a cutoff, survivors can still file cases and, if jurisdiction is  
7 satisfied, they can still do so in federal court. So, what Uber is really asking for is an arbitrary  
8 restriction on those cases participating in the MDL.

9 The arguments Uber offers are insufficient. *First*, Uber says that the potential settlement  
10 master “need[s]” the information generated by a cut-off. But there is no master yet (the parties  
11 have not yet even agreed on a proposed order). And no MDL-wide settlement discussions have  
12 occurred, nor are any scheduled. Uber’s claim of what a potential master “needs” to further  
13 hypothetical settlement discussions is rank speculation. In any event, whatever information might  
14 be useful to a settlement master could not justify an arbitrary cutoff while the initial bulk of  
15 common fact discovery is not even complete.

16 As an alternative, Uber suggests a census: that “all counsel ... identify any as-yet-unfiled  
17 cases.” Plaintiffs will, of course, work with any appointed master to exchange information to  
18 promote potential settlement. But a formal census costs time and money and, if conducted under  
19 the administration of the Court (or Judge Cisneros) would drain judicial resources for no obvious  
20 purpose. (That is why, when MDL courts order a census, they usually appoint some neutral or  
21 vendor to facilitate.) Uber does not explain how such effort could be justified given all of the  
22 work the parties need to complete in a short amount of time. Nor does it even begin to answer the  
23 questions relevant to design and implementation of a census, for example how to address  
24 concerns raised by mandatory disclosure of survivors who may have retained counsel but not yet  
25 decided to file a case, or what information Uber would be required to provide as part of the  
26 process. *See, e.g., Colgate v. JUUL Labs, Inc.*, No. 3:19-md-02913, ECF 262 (N.D. Cal. Nov. 19,  
27 2019) (setting out “Defendants’ Reciprocal Census Obligations,” including ESI-protocol-  
28 compliant data pulls and certifications under oath).

1           *Second*, Uber says that a cutoff will facilitate the bellwether process. But the parties  
 2 already submitted their bellwether selections. ECF 2373, 2375. Uber argues that information on  
 3 unfiled cases is required to “determine ‘the representativeness’ of possible bellwether cases.” But  
 4 this Court already rejected a similar argument when it refused to “delay the selection of cases  
 5 until more fact sheets have been exchanged,” doubting “that the 1,031 cases for which Plaintiff  
 6 Fact Sheets have been submitted somehow misrepresent the full roster of cases in the MDL.”  
 7 PTO 21 at 2. There is no reason to think anything different of unfiled cases.

8           The motion for a cutoff date should be denied.

9           Dated: February 26, 2025

Respectfully submitted,

11           By: /s/ Sarah R. London

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**FILER'S ATTESTATION**

I am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I attest that the signatories above concurred in this filing.

Dated: February 26, 2025

By: /s/ Andrew R. Kaufman  
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